



February 6, 2009

HOUSE BILL No. 1491

DIGEST OF HB 1491 (Updated February 4, 2009 5:41 pm - DI 69)

Citations Affected: IC 33-33; noncode.

Synopsis: St. Joseph superior court judges. Requires the nonpartisan election of superior court judges in St. Joseph County. Continues the terms of the St. Joseph superior court judges in office on June 30, 2009, until the date the judges' terms will end under the law in effect on June 30, 2009. Repeals provisions concerning judicial retention elections in St. Joseph County.

Effective: July 1, 2009.

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January 14, 2009, read first time and referred to Committee on Courts and Criminal Code.
February 5, 2009, reported — Do Pass.

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February 6, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1491

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 33-33-71-5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) There is
3 established a superior court in St. Joseph County.

4 (b) The court consists of eight (8) judges, **who shall be elected in**
5 **nonpartisan elections every six (6) years in St. Joseph County as**
6 **provided in section 5.3 of this chapter.**

7 (c) **The term of a judge begins January 1 following the judge's**
8 **election and ends December 31 following the election of the judge's**
9 **successor.**

10 SECTION 2. IC 33-33-71-5.3 IS ADDED TO THE INDIANA
11 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2009]: **Sec. 5.3. (a) Each of the eight (8) St.**
13 **Joseph superior court judges shall be elected in nonpartisan**
14 **elections every six (6) years.**

15 (b) **During the period under IC 3-8-2-4 in which a declaration**
16 **of candidacy may be filed for a primary election, a person who**
17 **desires to become a candidate for one (1) of the eight (8) judgeships**

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described in subsection (a) must file with the election division a declaration of candidacy:

- (1) adapted from the form prescribed under IC 3-8-2;
- (2) signed by the candidate; and
- (3) that designates which judgeship the candidate seeks. A declaration that does not include the designation shall be rejected by the election division or by the Indiana election commission under IC 3-8-1-2.

(c) To be eligible for election under this section, a candidate for a judgeship must be:

- (1) a resident of St. Joseph County; and
- (2) admitted to the practice of law in Indiana.

(d) If a person:

- (1) files a declaration of candidacy under subsection (b); and
- (2) subsequently ceases to be a candidate after the final date for filing a declaration under subsection (b);

the election division may accept the filing of additional declarations of candidacy for that judgeship until not later than noon August 1.

(e) All candidates for each respective judgeship shall be listed on the general election ballot:

- (1) in the form prescribed by IC 3-11; and
- (2) without party designation.

The candidate who receives the highest number of votes for each judgeship shall be elected to that office.

(f) IC 3, where not inconsistent with this chapter, applies to elections under this chapter.

SECTION 3. IC 33-33-71-36 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 36. (a) When a vacancy occurs in the St. Joseph superior court **created by the departure of a judge before the expiration of the judge's term of office**, the clerk of the court shall promptly notify the chairman of the commission of the vacancy. The chairman shall call a meeting of the commission within ten (10) days following this notice. The commission shall submit its nominations of five (5) candidates for each vacancy and certify them to the governor as promptly as possible, and not later than sixty (60) days after the vacancy occurs. When it is known that a vacancy will occur at a definite future date within the term of the serving governor, but the vacancy has not yet occurred, the clerk shall notify the commission immediately. The commission may within fifty (50) days of the notice of vacancy make its nominations and submit to the governor the names of five (5) persons nominated for the forthcoming vacancy.

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(b) Meetings of the commission shall be called by the chairman or, if the chairman fails to call a necessary meeting, upon the call of any four (4) members of the commission. The chairman, whenever the chairman considers a meeting necessary, or upon the request by any four (4) members of the commission for a meeting, shall give each member of the commission at least five (5) days written notice by mail of the time and place of every meeting unless the commission at its previous meeting designated the time and place of its next meeting.

(c) Meetings of the commission must be held at a place in the St. Joseph County courthouse in South Bend as the clerk of the St. Joseph superior court may arrange.

(d) The commission shall act only at a meeting and may act only by the concurrence of a majority of its members attending a meeting. Four (4) members are required to constitute a quorum at a meeting. The commission may adopt reasonable and proper rules and regulations for the conduct of its proceedings and the discharge of its duties.

SECTION 4. IC 33-33-71-40 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 40. (a) A vacancy occurring in the St. Joseph superior court **created by the departure of a judge before the expiration of the judge's term of office** shall be filled by appointment of the governor from a list of nominees presented to the governor by the judicial nominating commission. If the governor fails to make an appointment from the list within sixty (60) days from the day it is presented to the governor, the appointment shall be made by the chief justice or the acting chief justice of the supreme court from the same list presented to the governor.

(b) The governor shall make all appointments to the St. Joseph superior court without regard to the political affiliation of any of the nominees submitted to the governor. In the interest of justice, the governor shall consider only those qualifications of the nominees included in section 37 of this chapter.

(c) If the St. Joseph County judicial nominating commission, by a vote of any five (5) of its members, determines that, of the persons considered for any existing or expected vacancy in the St. Joseph superior court, less than five (5) are qualified for judicial office, within the scope of this chapter, the commission shall certify that determination to the governor together with the name or names of the person or persons found to be qualified under this chapter. In that event, the governor, chief justice, or acting chief justice shall make the selection or, if only one (1) name is submitted, make the appointment.

SECTION 5. IC 33-33-71-41 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 41. (a) An appointment

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by the governor, chief justice, or acting chief justice, as required by section 40 of this chapter, to the St. Joseph County superior court shall take effect immediately if a vacancy exists at the date of the appointment. The appointment shall take effect on the date the vacancy is created if a vacancy does not exist on the date of the appointment.

(b) A judge appointed under section 40 of this chapter serves during the unexpired part of the judge's predecessor's term in office.

SECTION 6. IC 33-33-71-68 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 68. (a) Whenever a judge of a St. Joseph County court is retired by the supreme court under this chapter and on the grounds set forth in ~~sections 44 and~~ section 46 of this chapter, the judge is considered to have retired voluntarily. In these situations, this chapter may not be construed to authorize any encroachment upon or impairment of any rights of the judge or the judge's surviving spouse under any constitutional or statutory retirement program.

(b) A judge of a St. Joseph County court who is removed from office by the supreme court on those grounds set forth in ~~sections 44 and~~ section 46 of this chapter is ineligible for judicial office and, pending further order of the supreme court, shall be suspended from the practice of law in Indiana.

SECTION 7. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2009]: IC 33-33-71-42; IC 33-33-71-43; IC 33-33-71-44.

SECTION 8. [EFFECTIVE JULY 1, 2009] **(a) Notwithstanding the amendment and repeal of provisions in IC 33-33-71 by this act, the term of a judge in office in the St. Joseph County superior court on June 30, 2009, does not terminate until the date that the term would have terminated under the law in effect on June 30, 2009.**

(b) The initial nonpartisan election under IC 33-33-71, as amended by this act, to fill a judge's position on the St. Joseph County superior court is the general election immediately preceding the date on which the term of the judge occupying the position on June 30, 2009, would have terminated under the law in effect on June 30, 2009.

(c) This SECTION expires January 2, 2015.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1491, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

PIERCE, Chair

Committee Vote: yeas 11, nays 0.

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